

Appl. No. 09/862,992
Reply to Office Action of January 28, 2005

REMARKS

This amendment is responsive to the Office Action dated January 28, 2005. Applicant has amended claims 17 and 23. Claims 17-28 are pending.

Applicant would like to thank the Examiner for discussing the Office Action in the above-entitled matter via telephonic interview on March 28, 2005. The undersigned and Examiner Zeender participated in the interview. No exhibits were presented, and no prior art was discussed. During the telephonic interview, the Applicant and the Examiner discussed rejections of claims 17-28 under 35 U.S.C. § 101.

In particular, Applicant reminded the Examiner that the claims in the present matter are similar to those in Application Serial No. 09/862,993, filed by Applicant. The Examiner acknowledged the similarity by noting that the claims in the present matter have been subject to a provisional obviousness-type double-patenting rejection with respect to claims 24-35 of Application Serial No. 09/862,993. The Examiner and the Applicant agreed that, to the extent of the similarity, the claims in the present matter could be placed in condition for allowance through an amendment that addressed the rejections under 35 U.S.C. § 101 in the same manner.

It was further agreed that, although claims 17-28 were subject to a provisional obviousness-type double-patenting rejection, a terminal disclaimer would not necessarily be appropriate at this time, because the claims in the present matter have not yet been deemed patentable.

Claim Rejection Under 35 U.S.C. § 101

In the Office Action, the Examiner rejected claims 17-28 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Applicants do not acquiesce in the claim rejections under 35 U.S.C. § 101. Applicants have previously argued that the claimed subject matter is patentable under 35 U.S.C. § 101, and Applicants incorporate those arguments herein.

Nevertheless, in the interest of expediting prosecution, Applicants have amended claims 17 and 23 to recite "executing a software application on a computer to aggregate the contracts." Support for utilization of software executing on a computer to aggregate the contracts can be

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found throughout the specification. For example, see page 12 line 28 though page 13, line 29. As another example, page 8, lines 5-16, of the present application states:

Automated aggregation is generally more efficient. Automated aggregation makes the frequent or even infrequent accumulation of small quantity individual contracts readily efficient.. The contracts are therefore more manageable. The result is that parties can transact in practical quantities relative to trading increments, and the quantities can be updated at frequencies ranging from fractions of an hour to weeks or months. By aggregating, the buyer can enhance revenue and achieve hedge protection on a practical level.

Accordingly, it may be desirable to receive and aggregate quantities automatically, for example, using a computer network such as the internet.. Private wide area networks and the use of intranet servers also may be used to aggregate quantities. In each case, the intermediary may load quantities into an aggregation engine running on a local workstation or a remote server.

The Examiner has suggested that relating at least one method step to a computer would overcome the rejection under 35 U.S.C. § 101. Applicants' amendments to claims 17 and 23 follow the Examiner's suggestion.

Claims 18-22 depend on claim 17, and recite all the elements of claim 17. Claims 18-22 therefore relate the claimed method and overcome the rejection under 35 U.S.C. § 101. Similarly, claims 24-28 depend on claim 23, and recite all the elements of claim 23. Because claim 23, as amended, overcomes the rejection under 35 U.S.C. § 101, claims 24-28 are also in condition for allowance.

Applicant's amendments are to claims 17 and 23, the only independent claims, in a manner analogous to the amendments made in Application Serial No. 09/862,993, which has been allowed.

For these reasons, the amendments to claims 17 and 23 place claims 17-28 in condition for allowance, and respectfully request withdrawal of the rejection under 35 U.S.C. § 101 and prompt allowance of the claims.

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Rejection for Obviousness-type Double Patenting

The Examiner also rejected claims 17-28 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 24-35 of commonly owned U.S. Patent Application No. 09/862,993. The obviousness-type double patenting rejection is provisional. Applicant has already filed a terminal disclaimer in response to a provisional rejection in U.S. Patent Application No. 09/862,993, and the obviousness-type double-patenting rejection can be withdrawn in the present matter without a terminal disclaimer. MPEP 1490 (page 1400-95).

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

25 April 2005

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